

920 KAR 1:090. Client Civil Rights complaint process.

RELATES TO: KRS 18A.095, 194A.005(1), 194A.030(10), 344.010(5), 344.015, 344.020, 7 C.F.R. 15, 15a, 15b, 15d, 15e, 16, 272.6, 28 C.F.R. 35, 36, 45 C.F.R. 80, 83, 84, 85, 86, 90, 91, 260.34, 260.35, 5 U.S.C. 552a, 7 U.S.C. 2011-2036, 20 U.S.C. 1681, 29 U.S.C. 794, 42 U.S.C. 290dd-1, 300w-7, 300x-57, 608(d), 708, 1996b, 8625, 9918, 10406, 12131-12213, 2000d-2000d-7, 6101-6107, Pub.L. 109-171, 110-246, 110-325, EO 2009-541, Pres. EO 13166

STATUTORY AUTHORITY: KRS 194A.050(1), 344.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 344.015 and the federal grants to the cabinet, inclusive of those funds through the United States Departments of Health and Human Services and Agriculture, require the Cabinet for Health and Family Services to maintain a program atmosphere free from discrimination and to respond to a complaint alleging discrimination. This administrative regulation establishes the client Civil Rights complaint process for programs administered directly by the cabinet or indirectly through a contractual or other arrangement.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1).

(2) "Cabinet program" means a program of service, financial aid, or other benefit administered by the cabinet and provided:

(a) Directly by the cabinet; or

(b) Indirectly by the cabinet through a contractual or other arrangement.

(3) "Client" means a person who:

(a) Applies in writing, electronically, verbally, or through a designated representative for participation in a cabinet program; or

(b) Receives a service, financial aid, or other benefit from a cabinet program.

(4) "Complaint" means a verbal or written allegation of discrimination in the delivery of a cabinet program.

(5) "Complainant" means a person or group of people who alleges discrimination in the delivery of a service, financial aid, or other benefit in a cabinet program.

(6) "Discrimination" is defined by KRS 344.010(5).

(7) "Nutrition program or activity":

(a) Means a cabinet program administered federally by the U.S. Department of Agriculture, Food and Nutrition Services; and

(b) Includes the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program:

1. Defined by 7 U.S.C. 2012, as amended by Pub.L. 110-246; and

2. Governed by Title 921 KAR Chapter 3.

(8) "Office of Human Resource Management" or "OHRM" means the major organizational unit of the cabinet established in accordance with KRS 194A.030(10) and EO 2009-541.

(9) "Protected class" means a group of people who qualifies for protection from discrimination under law, policy, or similar authority.

(10) "Retaliation" means an action taken against an individual because the individual participated in a protected activity, such as:

(a) Opposing or reporting a discriminatory practice; or

(b) Participating in or cooperating with an investigation of discrimination.

Section 2. Administrative Policy. (1) The cabinet shall comply with the following federal and state laws prohibiting discrimination:

(a) In a cabinet program:

1. KRS 344.015 and 344.020;
2. 28 C.F.R. 35 or 36;
3. 20 U.S.C. 1681;
4. 29 U.S.C. 794;
5. 42 U.S.C. 12131-12213, as amended by Pub.L. 110-325;
6. 42 U.S.C. 2000d-2000d-7;
7. 42 U.S.C. 6101-6107 or 45 C.F.R. 91;
8. Presidential Executive Order 13166; or
9. Another federal, state, or local law applicable to a cabinet program;

(b) In a nutrition program or activity:

1. 7 C.F.R. 15, 15a, 15b, 15d, 15e, 16, or 272.6; or
2. 7 U.S.C. 2011-2036, as amended by Pub.L. 110-246; or

(c) In a cabinet program funded through the U.S. Department of Health and Human Services:

1. 45 C.F.R. 80, 83, 84, 85, 86, 90, 260.34, or 260.35;
2. 42 U.S.C. 290dd-1, 300w-7, 300x-57, 708, 1996b, 8625, 9918, or 10406; or
3. 42 U.S.C. 608(d), as amended by Pub.L. 109-171.

(2) If a federal or state law specifies or sets a restriction for a cabinet program, such as eligibility for a service, financial aid, or other benefit, the restriction shall take precedence over a protected class under subsection (1) of this section.

Section 3. Complaint Submission. (1) The Office of Human Resource Management shall provide an internal complaint process to investigate and stop an activity in a cabinet program in accordance with Section 2(1) of this administrative regulation.

(2) An individual shall report a complaint by:

(a) Submitting a completed and signed CHFS-OHRM-EEO-1, CHFS Client Civil Rights Complaint Form;

(b) Submitting a written and signed statement to OHRM; or

(c) Verbally reporting a complaint to OHRM, if the individual refuses or declines to place allegations of discrimination in writing.

(3) The cabinet shall accept an anonymous complaint that provides sufficient information about alleged discrimination in a cabinet program to enable an investigation by OHRM.

(4) Staff of OHRM shall attempt to elicit from a complainant the following:

(a) The name, address, and telephone number or other means of contacting the complainant;

(b) The name of the cabinet program involved in the alleged discrimination and specific location delivering the cabinet program;

(c) 1. The nature of the incident or action that led the complainant to believe that discrimination was a factor; or

2. An example of the method of administration that is having a discriminatory effect on:

- a. The public;
- b. A potential eligible person; or
- c. A client;

(d) The basis on which the complainant believes discrimination or harassment exists, for

example:

1. Race;
2. Color;
3. Religion;
4. Sex;
5. National origin;
6. Age;
7. Retaliation;
8. Sexual orientation;
9. Disability;
10. Political beliefs;
11. Sexual harassment; or
12. Limited English proficiency;

(e) The name, telephone number, title, and business or personal address of any other person who may have knowledge of the alleged discrimination;

(f) 1. The date or dates during which the alleged discrimination occurred; and

2. The duration of the alleged discrimination, if it is continuing; and

(g) Recommendation of the complainant to resolve the alleged discrimination.

(5) Staff of OHRM shall document verbal information elicited in accordance with subsection (4) of this section.

(6)(a) No cabinet employee shall:

1. Retaliate against an individual who:

a. Submits a complaint in accordance with this section; or

b. Assists in the investigation of a complaint; or

2. Interfere with an investigation of a complaint.

(b) An employee who does not comply with paragraph (a) of this subsection shall be subject to disciplinary action, up to and including dismissal in accordance with KRS 18A.095.

Section 4. Complaint Acceptance. (1) Prior to taking action on a complaint, including an investigation, OHRM:

(a) Shall verify the complaint:

1. Indicates a violation of a law specified in Section 2 of this administrative regulation; and

2. Meets minimum reporting requirements established in Section 3 of this administrative regulation;

(b) Shall determine an action plan to address the complaint, including investigative steps; and

(c) May request consultation on the complaint from:

1. The head of the major organizational unit within the cabinet administering the cabinet program involved in the complaint or a designee;

2. The cabinet's Office of Legal Services; or

3. An entity listed in Section 9(1) of this administrative regulation.

(2) If an individual's allegation does not involve discrimination in a cabinet program in accordance with Section 2 of this administrative regulation, OHRM shall:

(a) Refer the individual to the:

1. Cabinet's Office of the Ombudsman;

2. Head of the major organizational unit within the cabinet administering the cabinet program involved in the allegation or a designee; or

3. Another federal, state, or local agency if the agency has jurisdiction over the program involved in the individual's allegation; or

(b) Provide written notice to the individual that no further action or investigation by OHRM is warranted, if the individual provided contact information.

Section 5. Complaint Processing. (1)(a) Except for a complaint that alleges discrimination in a nutrition program or activity, OHRM shall provide notice of a complaint's acceptance in accordance with Section 4(1) of this administrative regulation, to the:

1. Complainant, if the complaint includes information in accordance with Section 3(4)(a) of this administrative regulation; and

2. Head of the major organizational unit within the cabinet administering the cabinet program involved in the complaint.

(b) The Office of Human Resource Management shall process a complaint that alleges discrimination in a nutrition program or activity pursuant to Section 6 of this administrative regulation.

(2) In accordance with the complaint's action plan developed pursuant to Section 4(1)(b) of this administrative regulation, OHRM shall:

(a) Conduct an investigation, which may include:

1. Inspection of a cabinet program's records; and

2. An interview with:

a. A client;

b. Staff of a cabinet program; or

c. An individual with knowledge of the complaint who is either identified in the complaint or discovered during the course of the investigation; and

(b) Send written notice of the investigation's outcome to the:

1. Complainant, if the complainant provided information in accordance with Section 3(4)(a) of this administrative regulation; and

2. Head of the major organizational unit within the cabinet administering the cabinet program involved in the complaint.

(3)(a) The Office of Human Resource Management shall process a complaint in a cabinet program, subject to this section, within 180 days from the complaint's initial report.

(b) The executive director of OHRM or a designee may grant an extension to the timeframe specified in paragraph (a) of this subsection if OHRM:

1. Requires additional time to determine a complaint's outcome, including investigation of the complaint; and

2. Notifies the complainant who provided information in accordance with Section 3(4)(a) of this administrative regulation of the extension.

Section 6. Processing Complaints in a Nutrition Program or Activity. (1) In accordance with 7 C.F.R. 15 or 272.6, the cabinet shall maintain a separate Civil Rights complaint process for clients under a nutrition program or activity.

(2)(a) If a complaint in a nutrition program or activity is reported and accepted in accordance with Section 4(1) of this administrative regulation, OHRM shall advise the complainant, if known, in writing:

1. That the complaint has been received;

2. Of confidentiality and applications of 5 U.S.C. 552a;

3. Of planned actions, including investigation of the complaint; and

4. If additional information is needed to resolve the issue at the lowest possible level of the cabinet's organizational structure.

(b) If OHRM determines that further investigation of a complaint under a nutrition program or activity is not warranted, OHRM shall provide written explanation to the United States Depart-

ment of Agriculture, Food and Nutrition Services, Southeast Regional Office.

(3) The Office of Human Resource Management shall refer a client complaint of discrimination based on age in a nutrition program or activity to the United States Department of Agriculture, Food Nutrition Service, Southeast Regional Office, within five (5) days of the complaint's initial report.

(4) Unless the United States Department of Agriculture grants an extension, OHRM shall process a complaint in a nutrition program or activity, accepted in accordance with Section 4(1) of this administrative regulation, within ninety (90) days of the complaint's initial report.

(5) An investigation of a complaint in a nutrition program or activity shall consist of:

(a) Contact with the client involved in the alleged discrimination or an authorized representative;

(b) A review of the client's case file;

(c) A review of a sample of case files of similarly situated clients, if the client involved in the alleged discrimination is a client in the Supplemental Nutrition Assistance Program; and

(d) Contact with the major organizational unit within the cabinet that administers the nutrition program or activity for a response to the allegation established in the complaint.

(6) Upon conclusion of any planned action on a complaint under a nutrition program or activity, OHRM shall provide written notice to the complainant, if known, that contains:

(a) The name of the complainant;

(b) A number identifying the complaint;

(c) The date the complaint was reported to OHRM;

(d) The cabinet's jurisdictional authority;

(e) A statement of each allegation and an applicable legal citation from Section 2(1) of this administrative regulation;

(f) The methodology for the investigation of the complaint;

(g) The outcome of the investigation; and

(h) The complainant's right to file a complaint with the Secretary of the United States Department of Agriculture and contact information.

Section 7. Recommendation for Corrective Action. (1) If an investigation's outcome indicates the need for a corrective action by the cabinet program, OHRM shall recommend the corrective action to the major organizational unit within the cabinet administering the cabinet program involved in the complaint.

(2) A recommendation for corrective action may include:

(a) Referral to law enforcement, if a criminal act is suspected;

(b) Technical assistance from a federal or state agency, if the federal or state agency has:

1. Expertise sought by OHRM or the cabinet program; or

2. Jurisdiction over the cabinet program involved in the complaint; or

(c) Disciplinary action against a cabinet employee, up to and including dismissal in accordance with KRS 18A.095, if the investigation's outcome indicates cause.

Section 8. Withdrawal of a Complaint. (1) A complainant shall submit a written and signed statement to OHRM to:

(a) Request a withdrawal of a complaint; and

(b) State the reason for the withdrawal.

(2) The Office of Human Resource Management shall accept a request for a complaint's withdrawal from a complainant if:

(a) The request shows no sign of coercion, harassment, or another act to compel the complainant to withdraw the complaint; and

(b) The complaint's allegation no longer merits continuing the investigation.

(3) The Office of Human Resource Management shall send written notice to the complainant and the head of the major organizational unit within the cabinet administering the cabinet program involved in the complaint, if OHRM:

(a) Accepts the request for withdrawal; or

(b) Rejects the withdrawal request and proceeds with an investigation or another planned action.

Section 9. Alternative Complaint Processes. (1) In lieu of, or in addition to, the Civil Rights complaint process established in this administrative regulation, a client may elect to file a complaint directly with another entity, such as the:

(a) U.S. Department of Health and Human Services' Office for Civil Rights;

(b) U.S. Department of Agriculture's Office of Assistant Secretary for Civil Rights or Food Nutrition Service Southeast Regional Office;

(c) U.S. Department of Education's Office of Civil Rights;

(d) U.S. Department of Labor's Civil Rights Center;

(e) U.S. Department of Justice's Civil Rights Division;

(f) Kentucky Commission on Human Rights; or

(g) Another federal, state, or local agency with jurisdiction over the cabinet program involved in the alleged discrimination.

(2) Upon request of a client, OHRM shall provide information on filing a complaint with an entity listed in subsection (1)(a) through (g) of this section.

(3) This administrative regulation shall not inhibit an individual's right to seek review through a court of appropriate jurisdiction.

Section 10. Incorporation by Reference. (1) The "CHFS-OHRM-EEO-1, CHFS Client Civil Rights Complaint Form", edition 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (36 Ky.R. 1412; 1943; eff. 3-5-2010.)